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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Genesis Global Holdco, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-10063 (SHL)

GEMINI TRUST COMPANY, LLC, for itself
and as agent on behalf of the Gemini Lenders,

Plaintiff,

v.

GENESIS GLOBAL CAPITAL, LLC,
GENESIS GLOBAL HOLDCO, LLC, and
GENESIS ASIA PACIFIC PTE. LTD.

Defendants.

Adv. Proc. No. 23-01192 (SHL)

**MOTION TO DISMISS COUNTS II, III, AND IV OF THE COMPLAINT AS TO
GENESIS GLOBAL CAPITAL, LLC AND ALL COUNTS
AS TO GENESIS GLOBAL HOLDCO, LLC AND GENESIS ASIA PACIFIC PTE. LTD.**

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s tax identification number (as applicable), are: Genesis Global Holdco, LLC (8219); Genesis Global Capital, LLC (8564); Genesis Asia Pacific Pte. Ltd. (2164R). For the purpose of these Chapter 11 Cases, the service address for the Debtors is 175 Greenwich Street, 38th Floor, New York, NY 10007.

Defendants Genesis Global Capital, LLC (“GGC”), Genesis Global Holdco, LLC (“Holdco”), and Genesis Asia Pacific Pte. Ltd. (“GAP”, and together with GGC and Holdco, “Defendants”) submit this Motion to Dismiss Counts II, III, and IV of the Complaint as to Genesis Global Capital, LLC and All Counts as to Genesis Global Holdco, LLC and Genesis Asia Pacific Pte. Ltd. (the “Motion to Dismiss”) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendants respectfully allege:

Relief Requested

1. By this Motion to Dismiss, GGC seeks dismissal of Counts II, III, and IV of the complaint filed by Gemini Trust Company, LLC (“Plaintiff” and such complaint filed by Gemini Trust Company, LLC, the “Complaint”), and Holdco and GAP seek dismissal of the Complaint in its entirety.

2. On October 27, 2023, Plaintiff filed the Complaint, which asserted against the Defendants four counts: (i) declaratory judgment that Plaintiff is entitled to set off the proceeds of its purported foreclosure of the collateral transferred to Gemini in August 2022; (ii) declaratory judgment that Plaintiff has a secured interest in certain additional shares of Grayscale Bitcoin Trust (the “Additional GBTC Shares”); (iii) declaratory judgment that the Additional GBTC Shares are not property of the Debtors’ estates; and (iv) claim for imposition of constructive trust over the Additional GBTC Shares.

3. For the reasons set forth in Defendants’ *Memorandum of Law in Support of Their Motion to Dismiss Counts II, III, and IV of the Complaint as to Genesis Global Capital, LLC and All Counts as to Genesis Global Holdco, LLC and Genesis Asia Pacific Pte. Ltd.* (the “Memorandum of Law”), filed contemporaneously herewith and incorporated herein by reference, GGC now seeks dismissal of Counts II, III, and IV of the Complaint, and Holdco and

GAP seek dismissal of the Complaint in its entirety, on the grounds that Plaintiff has failed to state a claim upon which relief may be granted.

Prayer for Relief

WHEREFORE, GGC respectfully prays that this Court dismiss Counts II, III, and IV of the Complaint, and Holdco and GAP respectfully pray that this Court dismiss the Complaint in its entirety.

Conclusion

For the foregoing reasons, Defendants respectfully request entry of the proposed order attached hereto as **Exhibit A**, (i) granting Defendants' Motion to Dismiss, (ii) dismissing Counts II, III, and IV of the Complaint as to GGC and the Complaint in its entirety as to Holdco and GAP, and (iii) granting such other and further relief as may be necessary and proper.

Dated: November 21, 2023
New York, New York

Respectfully submitted,

/s/ Luke A. Barefoot

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Exhibit A

Proposed Order

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GEMINI TRUST COMPANY, LLC, for itself
and as agent on behalf of the Gemini Lenders,

Plaintiff,

-against-

GENESIS GLOBAL CAPITAL, LLC,
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GENESIS ASIA PACIFIC PTE. LTD.

Defendants.

Adv. Proc. No. 23-01192 (SHL)

**ORDER DISMISSING COUNTS II, III, AND IV OF THE COMPLAINT AS TO
GENESIS GLOBAL CAPITAL, LLC AND ALL COUNTS
AS TO GENESIS GLOBAL HOLDCO, LLC, AND GENESIS ASIA PACIFIC PTE. LTD.**

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's tax identification number (as applicable), are: Genesis Global Holdco, LLC (8219); Genesis Global Capital, LLC (8564); Genesis Asia Pacific Pte. Ltd. (2164R). For the purpose of these Chapter 11 Cases, the service address for the Debtors is 175 Greenwich Street, 38th Floor, New York, NY 10007.

Upon Defendants' Motion to Dismiss Counts II, III, and IV of the Complaint as to Genesis Global Capital, LLC and All Counts as to Genesis Global Holdco, LLC and Genesis Asia Pacific Pte. Ltd. (the "Motion to Dismiss")² in the above-captioned adversary proceeding, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable in adversary proceedings by Federal Rule of Bankruptcy Procedure 7012(b) (the "Bankruptcy Rules"); and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having considered the Motion to Dismiss and the Memorandum of Law; and notice of the Motion to Dismiss having been given in accordance with the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York; and it appearing that no other or further notice need be provided; and the Court having held a hearing to consider the Motion to Dismiss; and upon the record of the hearing; and after due deliberation and sufficient cause appearing therefor:

IT IS HEREBY FOUND AND ORDERED THAT:

1. Counts II, III, and IV of the Complaint as to Genesis Global Capital, LLC fail to state a claim upon which relief may be granted.
2. The Complaint in its entirety as to Genesis Global Holdco, LLC and Genesis Asia Pacific Pte. Ltd. fails to state a claim upon which relief may be granted.
3. The Motion to Dismiss is GRANTED as set forth herein.
4. Counts II, III, and IV of the Complaint as to Genesis Global Capital, LLC are dismissed.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion to Dismiss.

5. The Complaint in its entirety as to Genesis Global Holdco, LLC and Genesis Asia Pacific Pte. Ltd. is dismissed.

6. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion to Dismiss or the implementation, interpretation or enforcement of this Order.

Dated: _____, 2023
New York, New York

HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE